

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

-----X

4 JOSEPH POGGIOLI, JR.,
5 Plaintiff,

Civ. No.:

6 -against-

07/6674

7 PATRICK J. CARROLL,
8 INDIVIDUALLY, AND THE CITY OF
9 NEW ROCHELLE, NEW YORK,
Defendants.

-----X

10
11 3 Gannett Drive
White Plains, New York
12 October 30, 2007
10:17 AM

13
14
15
16
17
18
19 Examination before Trial of Plaintiff,
20 JOSEPH POGGIOLI, held pursuant to Order, at the
21 above time and place, before Susie Cabanas-Diaz, a
22 Notary Public of the State of New York.
23
24
25

A P P E A R A N C E S :

LOVETT & GOULD, LLP

Attorneys for Plaintiff

222 Bloomingdale Road

White Plains, New York 10605-1513

BY: DRITA NICAJ, ESQ.

Email: dnicaaj@lovet-gould.com

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP

Attorneys for Defendants

3 Gannett Drive

White Plains, New York 10604-3407

BY: PETER A. MEISELS, ESQ.

Email: peter.meisels@wilsonelser.com

1
2 IT IS HEREBY STIPULATED AND AGREED, by
3 and between the attorneys for the respective
4 parties hereto, that this examination may be
5 sworn to before any Notary Public.
6

7 IT IS FURTHER STIPULATED AND AGREED that
8 the sealing and filing of the said examination
9 shall be waived.
10

11 IT IS FURTHER STIPULATED AND AGREED that
12 all objections to questions except as to form
13 shall be reserved for trial.
14
15
16
17
18
19
20
21
22
23
24
25

1
2 J O S E P H P O G G I O L I, a
3 Plaintiff, having been first duly sworn by Susie
4 Cabanas-Diaz, a Notary Public of the State of New
5 York, and stating his address as 25 Wyndham Lane,
6 Carmel, New York 10512, was examined and testified
7 as follows:

8 MS. NICAJ: My name is Drita Nicaaj. I
9 represent Joseph Poggioli. I would like
10 Mr. Poggioli to have an opportunity to review and
11 correct his deposition transcript once the
12 transcript is available. Will you be providing
13 that, Mr. Meisels?

14 MR. MEISELS: No.

15 MS. NICAJ: Okay. Then we'll a
16 request a copy.

17 MR. MEISELS: And we're requesting a copy
18 as well.

19 EXAMINATION BY

20 MR. MEISELS:

21 Q Mr. Poggioli, my name is Peter Meisels and
22 I'm going to be asking you some questions about your
23 complaint in this matter. If they're not clear,
24 please tell me and I'll be happy to rephrase them.
25 Fair enough?

POGGIOLI

A Yes.

Q I'm going to show you what's been premarked as Defendants' A for identification and ask you to review that document and then tell me if you can identify it.

(Defendants' Exhibit A, previously marked for identification.)

(Witness Perusing)

A I haven't read each word but it looks like a copy of my complaint. If you want me to read each word --

Q Well, let me ask you a follow-up question before --

A Can I just add something? I never saw these last two pages before.

Q Fair enough. In reference to the first five pages of the document, have you ever seen those first five pages before today?

A Yes.

Q At the time that you saw them prior to today, did you review them?

A Yes.

Q And at the time that you reviewed them, was it your impression that everything in that

POGGIOLI

document was accurate?

MS. NICAJ: Objection. You can answer.

A Like I said, I didn't read each word. If you want me to read each word, I can do that but it looks like it is, yes.

Q Okay. Fair enough. Where are you residing now?

A In Carmel, New York.

Q The same address as you've had for the last several years?

A Yes.

Q How long have you lived there?

A About six years.

Q Okay. And what is your actual address?

A 25 Wyndham Lane, Carmel, New York 10512.

Q And how are you presently employed?

A I'm not.

Q And when were you last employed?

A July 20, 2007.

Q Are you presently receiving a pension?

A Yes.

Q And is that in connection with your prior employment as a police officer?

A Yes.

POGGIOLI

down.

Q Could we move on to Paragraph 9 and particularly I'm referring to the first sentence of Paragraph 9 where it says, "On July 20, 2007, Respondents in writing terminated Plaintiff's employment, a termination that was motivated in whole and/or substantial respect by: A) Plaintiff's 2006 filing and/or the substantive allegations contained in the complaint."

Now your complaint refers to a 2006 filing. Are you referencing a lawsuit that you brought in 2006?

A Yes.

Q Okay. And what is the basis for your belief that your termination was motivated as a result of your filing that 2006 lawsuit?

A It's obvious that the police commissioner wasn't happy that I filed another federal complaint against him because I had done so previously in 1994 and prevailed. He always thought that I was a thorn in his side being the PBA president previously and this was just a motivation on his part.

Q And when you say that it was obvious that he wasn't happy, okay, how did that manifest itself?

1 POGGIOLI

2 didn't have a good light on the commissioner.

3 Q And am I correct that your term of office
4 as PBA president expired on December 31st, 2003?

5 A I think that was the year, yes, sir.

6 Q Referring back to Paragraph 9 on Page
7 3 of your complaint, in reference to
8 subparagraph B which reads, "Evidence of corruption
9 rampant in the city government including its court
10 and police department as adduced by Plaintiff during
11 the disciplinary proceedings as presided over by
12 Ponzini." You see that?

13 A Yes, sir.

14 Q What evidence of corruption in city
15 government was disclosed at the disciplinary
16 proceeding to which you refer to here?

17 MS. NICAJ: Objection. You can answer.

18 A There were numerous incidents that I
19 mentioned during the -- that was mentioned during
20 the trial of theft from departmental employees,
21 criminal mischief and they were mentioned in the
22 trial itself.

23 Q Okay. Now other than theft and criminal
24 mischief, as you sit here today do you recall any
25 other evidence of corruption in city government that

POGGIOLI

was disclosed during your disciplinary hearing?

A Yes, there was mention of the -- of city court.

Q And do you recall what was mentioned about the city court?

A That was client/attorney communication.

Q Okay. Now I'm not asking you about the substance of any attorney/client communication. I am asking you about what was disclosed on the record at the disciplinary hearing. Was anything in reference to the city court disclosed on the record at the disciplinary hearing?

A Yes.

Q Could you tell me what that was?

A Involving the city marshal.

Q Anything else that you recall?

A Involving the employees of the court.

Q Do you recall which employees?

A Again, this is information that I had with my attorney.

MS. NICAJ: It's whatever you communicated with your attorney, do not disclose to Mr. Meisels, but he, I think, is asking what, if any, information, did you learn through the

POGGIOLI

disciplinary proceeding against you about this
city court. You understand?

THE WITNESS: Yes.

MS. NICAJ: At the hearing itself, okay?

THE WITNESS: She explained it.

MR. MEISELS: You got it? Okay. Good.

A Thank you. Yes, that there was employees
involved in use of drugs and larceny in the city
court.

Q Do you know whether or not the employees
in the city court are employed by the State of New
York or the city of New Rochelle or some other
entity?

A I know that some of the employees are
employees of the State of New York and some of them
are employees of the city of New Rochelle. I don't
know which ones, though.

Q In reference to the persons who were
alleged to have used drugs, do you know whether
those persons were state employees or city
employees?

A I'm sorry, I don't know.

Q Okay. In reference to the persons who
allegedly committed a larceny, do you know whether

POGGIOLI

those persons were state employees or city employees?

A I'm sorry, I don't know.

Q Earlier you had mentioned that during the course of your disciplinary [sic], you became aware that there had been theft in city government, is that correct?

MS. NICAJ: Objection. You can answer.

A Yes.

Q Was that the theft -- withdrawn.

Is that theft the same incident that you just referenced concerning a larceny in the city court?

A Could you say that again, please.

Q Sure. The theft that you mentioned earlier, is that the same incident that you just referenced as a larceny and occurring in the city court?

A The theft and the larceny pertaining to the city court?

Q Right. Are they the same?

A Yes.

Q You had mentioned criminal mischief earlier in your testimony this morning. Do you have

POGGIOLI

A No, I'm sorry.

Q Do you know if it occurred in the 1990s?

A I don't know. Sorry.

Q As far as you know is Detective Torres still employed by the New Rochelle police department?

A Yes, he is.

Q What is the basis for your information about this incident concerning Detective Torres?

A Well, like I said, when something happens in the police department everybody knows about it.

Q Okay, so it's word of mouth?

A Word of mouth.

Q In reference --

A Can I just add something?

Q Sure.

A There were others. I just can't think of them right now.

Q Okay. If you think of them in the course of the deposition, stop me and inform us.

A Okay. Thank you.

Q Mr. Poggioli, were you ever offered a suspension in satisfaction of the charges that ultimately were heard in your disciplinary hearing?

POGGIOLI

A I was offered days -- I'm sorry. I was offered to lose days' pay, yes.

Q Do you recall how many days that was?

A I think it was 30 days but I don't know if it was 30 calendar days or 30 paid days.

Q It would be one or the other?

A Yes.

Q And am I correct that you rejected that proposal?

A There was more to it.

Q Okay. What else was involved?

A They also wanted for me to be suspended from off duty work for six months.

Q So am I correct that the offer was that you would lose 30 days either pay or calendar days plus be suspended from off duty employment for six months?

A I think it was -- yes, but I think it was a 30-day suspension now that I -- I think it was 30 days' suspension. Suspended for 30 days.

Q So it would be a 30 day suspension plus loss of off duty employment for six months?

A Yes.

Q And when the term off duty employment is

POGGIOLI

used, does that refer to the special duty employment?

A Yes.

Q And is that the special duty employment that you received through the department?

A Yes.

Q And am I correct that you rejected that proposal?

A Yes.

Q Was there a reason that you rejected it?

A I wasn't guilty.

Q Let's go back to Paragraph 10 of the complaint where we -- withdrawn.

Going to back to Paragraph 10 of the complaint where it references, "Members of the department who wholesale violated and continue to violate the federal civil rights of the only police officer of Middle Eastern descent."

Can you identify which police officer is responsible for violating the federal civil rights of the only police officer of Middle Eastern descent?

A That's attorney/client communication.

Q Other than communications that you've had

POGGIOLI

with your attorneys, do you have any information about the identities of police officers who violated the civil rights of the only police officer of Middle Eastern descent?

A Besides my communications with my attorney?

Q Yes.

A No.

Q So am I correct that your communications with your attorney is the sole basis for your belief concerning this incident?

A Yes.

Q Okay. Do you know who -- withdrawn.

Can you identify the officer who allegedly is the only police officer of middle eastern descent?

A P.O. Ali [sic]. I think it's A-L-I, the spelling of his name. I don't know.

MS. NICAJ: You should know it.

MR. MEISELS: But I'm not under oath. I can't testify.

A You know who I mean, though.

Q Okay. So your best understanding of his name is --

POGGIOLI

A I don't know.

MR. MEISELS: No further questions subject
to our stipulation about damages.

MS. NICAJ: Sure.

THE WITNESS: Thank you.

MR. MEISELS: Thank you.

(Time Noted: 11:47 AM)

JOSEPH POGGIOLI

Subscribed and sworn to before me this ____ day
of _____ 2007.

_____, Notary Public.

POGGIOLI

I N D E X

WITNESS

JOSEPH POGGIOLI

EXAMINATION BY

MR. MEISELS

4

E X H I B I T S

DEFENDANTS'

PAGE

A - Previously marked

5

Mr. Meisels has retained all exhibits.

POGGIOLI

C E R T I F I C A T I O N

I, SUSIE CABANAS-DIAZ, a Court Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That the witness whose deposition
is herein before set forth, was duly sworn
by me, and that the within transcript is a
true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this *1st* day of *NOVEMBER*, 2007.

Susie Cabanas-Diaz

SUSIE CABANAS-DIAZ